(Testimony of Henry Lester Pineda.)

A. You say 200. I said around 200 or 300. You keep saying a certain number.

Mr. Faulkner: Would your Honor caution the witness to wait until the question is finished?

The Court: Wait till he gets through with the question. Then you may answer. Read the question.

(Question read.)

Mr. Pratt: I object to that.

Mr. Faulkner: I ask him not to object until I finish my question, too.

Mr. Pratt: You had finished your question, had you not? I object to the question.

Mr. Faulkner: I had not finished the question.

Mr. Pratt: Because it is not what he testified.

Mr. Faulkner: The witness has interrupted the question and Counsel has interrupted the question.

The Court: Reframe the question.

Mr. Faulkner: Very well.

Q. Of the 200 cases of butter, cubes of butter, that you had moved into the butter room about a week before Colonel Hand came, what proportion of them were rejected by Colonel Hand on the day he went out there to inspect?

Mr. Pratt: I object to that because it misquotes the testimony of the witness. He said that he would not state whether 200 or 300 of these cubes of butter. Now Counsel is quoting him as saying 200. It is a variable amount and not a definite amount.

Mr. Faulkner: Withdraw the question.

Q. Mr. Pineda, on the occasion that you took out from the lower floor of the warehouse some but-

(Testimony of Henry Lester Pineda.)

ter and put it into the ice house and about a week later Colonel Hand came to inspect it, [800] what was the quantity of butter that you moved from the warehouse floor into the freezer on that occasion? A. I don't remember how much.

Q. Was it five cases? A. No.

Q. Was it eleven? A. No.

Q. Was it as Counsel for the Government says between two and three hundred?

A. 200 and 300 and 400. All the butter on the floor was packed in a certain place. I can't tell you exactly how many cubes.

Q. It was 68 pounds to the cube, it would weigh?

A. 68 to 70, 68.

Q. When you moved it into the freezer was other butter there? A. Yes.

Q. When you moved that in? A. Yes.

Q. How much?

A. I don't know how much.

Q. Was it larger in quantity than the amount you were moving in?

A. Well, more or less around the same amount, we had quite a lot of butter there.

Q. Now, between the time that you moved the butter in on that day and the day you moved some out a couple of days before Colonel Hand came did you move any other butter in there?

A. No, I didn't, but Mr. Goddard did.

Q. Then did you move any butter out before Colonel Hand came after this incident where you moved butter in about a week before he came there?

(Testimony of Henry Lester Pineda.)

A. I could say a couple of days before [801] certain samples I pulled out.

Q. Was the butter cut? A. No.

Q. So for the week before the Colonel came in there was no butter cutting going on?

A. Not at the plant.

Q. Is that right? A. Yes.

Q. How much butter was in that freezer room on the occasion that you took some samples out a few days before Colonel Hand came?

A. I don't know. It was not my business to count the butter. All I had to do was follow orders from Ruby.

Q. You were in there? A. Yes.

Q. You saw that room? A. Yes.

Q. You knew substantially how many cubes of butter were there, didn't you?

A. No, I didn't.

Q. Was the wall filled?

A. We piled them up as high as we could. I coudn't tell you how much was there.

Q. How high was that?

A. All the way up.

Q. To the ceiling?

A. Yes, up to the coils. We had coils in the room; up to the coils.

Q. How did you select the 25 or 30 cases that you were going to exhibit to Colonel Hand when he came in?

A. Well, when they came in those cases were already set aside, placed right in front of the room

(Testimony of Henry Lester Pineda.)

lar lots of butter we have there. We don't put it in and mix it up with the butter. We will never find the different churns.

Q. When had you done that, when had you placed 25 or 30 cases [802] of butter in an available place in that freezer room?

A. When I first took the butter out.

Q. The day you first saw some butter on the floor of the Nye & Nissen warehouse there was some butter out of that amount, regardless of how much it was, that had been set aside, is that right?

A. What do you mean "set aside"?

Q. You have referred to a quantity of butter a week before Colonel Hand came in there and it is on the floor of Nye & Nissen and it has just been brought in there off a truck; do you remember the incident? A. It was placed on the floor.

Q. There is a quantity of butter that you don't remember, is that right? A. Right.

Q. You don't know whether it was five cases or eleven?

A. Do I have to answer that; do I know if it is more than five or eleven? I am talking about hundreds. I am not talking about two or three cases. If there was five cases I couldn't remember. There are amounts of five hundred and four hundred. There are no five cases of eleven cases. I know it was not five and not eleven.

Q. You know it was not five and you know it was not eleven? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. That is the extent of your knowledge of the quantity?

A. To be exact and more accurate, yes. I wouldn't want to say a certain amount when I haven't any idea.

Q. You know there were 25 or 30 cases selected as samples? [803]

A. Yes.

Q. How do you fix that figure?

A. Because I remember I pulled out two trays and they were not quite full.

The Court: It is time to take the recess.

(After recess.)

Mr. Faulkner: Q. At the time you picked out these samples, 25 or 30, you picked them out of a larger quantity, is that correct?

A. No; they were already picked out.

Q. Were they already picked out?

A. Yes.

Q. Who picked them out?

A. Well, when I put them into the cooler I left out one from each churn. Most of the cases were marked "Sample". If they were not I would make sure. I would leave one from each churn out in front of the lot.

Q. When they were out on the warehouse floor when you first saw them you selected 25 or 30 cases, did you not, and set apart——

A. I didn't exactly select them. When they come in each churn is generally marked.

(Testimony of Henry Lester Pineda.)

Q. Is the churn marked or the carton in which the butter is contained? A. Yes.

Q. Is the word "Sample" marked on the container in which the butter is contained?

A. Not on all of them.

Q. Is it on some of them? A. Yes.

Q. In other words, the letter "S-a-m-p-l-e" is stencilled on some of those cases?

A. On some, yes.

Q. They relate to a sample of a churn?

A. Yes. [804]

Q. On some occasion a week before Colonel Hand was there you selected 25 or 30 of those boxes?

A. Yes.

Q. From the floor of the warehouse?

A. Yes.

Q. Was the butter on flats at the time?

A. Yes.

Q. Did you break those flats down to get those 25 or 30 cases? A. No.

Q. How did you get them off?

A. Most of them were already on a flat, a separate flat because when they would buy the butter I believe Mr. Smith would score it to see if he wanted that butter, or there would be a Government man come in to score it.

Q. Did he score that butter?

A. I didn't see him scoring it, but I was given to understand that he did.

Q. Did you see any Government man score this or not? A. No.

(Testimony of Henry Lester Pineda.)

Q. I am trying to visualize the particular occasion that you were explicit about on your direct examination, a particular quantity of butter on the floor of the warehouse and you removed from that butter 25 or 30 samples; the samples had already been isolated from the remaining part of the pack, isn't that right? A. Yes.

Q. Who had done that work of isolating these boxes of butter, or these cartons of butter?

A. I don't know.

Q. Was it done in your presence? A. No.

Q. Then on this particular occasion you had 25 or 30 samples of butter and you had a larger quantity of butter in addition on the floor?

A. That's right. [805]

Q. You received a direction to do something with the samples? A. Yes.

Q. What did you do?

A. I was told to place this in front of this butter after I stacked it in the cooler; I was told to place it in front.

Q. You took the 25 or 30 cases and you put those cases in front of the cooler?

A. Yes. In the cooler, but in front of this pile. I don't mean in front of the cooler on the floor. I got the butter already on the floor inside the cooler, already stacked, and I placed the butter in front of the cooler, I mean in front of the pile in the cooler.

Q. When you went to take the butter out you put the butter that did not form part of the samples in first? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. You did all that single handed; that's right, isn't it?

A. No, not all of it, no.

Q. You say most of it, would you?

A. Yes, most of it.

Q. It was a two-man job?

A. Everything is a two-man job, but it is twice as hard for one man to do it but he can do it.

Q. After you got the remaining part of that butter into the freezer room you then followed the instructions you received for the 25 or 30 cubes that were marked "Sample" in front of it so they would be more acceptable? A. That's right.

Q. When the other butter came that you mentioned that was not part of that load what did you do with that butter, the butter that came in between the day you put the butter that you saw a [806] week before the Colonel was there, when the other butter came in before the Colonel came, what did you do with that butter?

Mr. Pratt: I object to that. Again he is making a mistake as far as the testimony is concerned.

Mr. Faulkner: Is it your objection that I have misstated the record?

Mr. Pratt: Well, I don't like to——

Mr. Faulkner: Go right ahead.

Mr. Pratt: I don't imply that it is done intentionally.

Mr. Faulkner: I did not intentionally and I did not in fact. The witness testified before the recess that he took the butter in and there was butter

(Testimony of Henry Lester Pineda.)

already in the cooler and that butter went in there and I want to know what he did with the butter that went in after.

Mr. Pratt: I don't recall any such testimony as that.

Mr. Faulkner: Well, I do.

The Witness: I have nothing to do with the butter that came in after. We would, like on city orders, that butter comes already cut from Petaluma.

Mr. Faulkner: I object to the witness volunteering, your Honor. He is making a speech. He has made an objection.

The Court: We will have the reporter read the question.

(The question was read by the reporter.)

The Court: That question is quite involved.

Mr. Faulkner: Q. Butter came into the plant of Nye & Nissen after this quantity of butter which you have referred to on your direct examination and cross-examination as being in the plant a week before Colonel Hand inspected some butter, did it not? A. Yes.

Q. What did you do with that butter after you had put the butter away that was out on the floor that had the 25 or 30 sample cases?

A. I know nothing about that, of that butter.

Q. Did anyone else do anything to that butter?

A. They must have. They put some in the cooler, they put it on the flats.

Q. The butter was put into the cooler after you had stored the butter which formed a part of the

(Testimony of Henry Lester Pineda.)

butter in which you were told to store one part first and then the samples, then other people put butter in the cooler, did they not?

A. Not into the cooler, no. We have two butter coolers. [808]

Q. Then that particular lot that was on the warehouse floor is the only butter that was in that cooler, is that right?

A. No. I said before there was some butter there before then.

Q. Was any butter put into that cooler after that incident in which you stacked carefully the sample cases in front of the rest of the butter?

A. Yes.

Q. Who put it in there? A. I don't know.

Q. In what quantity was it put in?

A. Well, the butter that was put in after is usually put on flats so the butter outside stays on the floor overnight, and then that butter in the morning is taken out, and whatever the city orders call for that is used in the morning, whatever the orders call for.

The Court: By a flat, what do you mean?

A. That is the skid.

The Court: Describe it to the Jury.

Mr. Faulkner: Maybe I can help, your Honor.

The Court: Well, he has repeatedly used the word flat. I was trying to figure it out.

Mr. Faulkner: A flat, Mr. Pineda, is something built low to the ground and will contain either eggs or contain butter, and it is so constructed that you

(Testimony of Henry Lester Pineda.)

can take a truck with wheels on and slide it under and pull some mechanism on it and off you go?

A. Yes.

Q. Is that right? A. Yes.

Q. And the flats are as large as a table, the table next [809] to the clerk's table, perhaps?

A. A little wider, I think.

Q. A little wider? A. Yes.

Q. Do they use the same flats for butter as they do for eggs? A. Yes.

Q. They will hold six cases of eggs?

A. Six cases, flat.

Q. I mean the first layer. A. Yes.

Q. To return to this butter, sometime between the time of the last act that you performed in connection with any butter in that room until a couple of days before the Colonel came, the last act was to put the sample cases into position in front of the other cases? A. Yes.

Q. When you went in there, Mr. Pineda, to take some butter out a couple of days before the Colonel came in, how much additional butter had been put into the freezer room? A. I don't know.

Q. But you know some was, don't you?

A. Yes.

Q. Well, would there be an amount as considerable as there was in there before? A. No.

Q. Would you say 100 cases had been put in, 100 cubes?

A. I wouldn't know how much.

(Testimony of Henry Lester Pineda.)

Q. Now, Mr. Goddard is the one who told you to bring those samples out on the floor? A. Yes.

Q. Did you bring them out? A. I did.

Q. You kept them out all day, is that right?

A. Are you referring to the day Colonel Hand came?

Q. No. I am referring to the time you brought them out after the cases had been in there. [810]

Q. They remained all that day, is that right?

A. That's right.

Q. Did they remain the next day?

A. No, no. This was taken out. All we did, just moved them because we were making some room in the icebox, there. You know, we started putting in the samples already on the flat—any time you want to go in and get anything you have to move them. Every day used to take them out during the daytime, that was his business, what he wanted to do, so he wouldn't waste all the time of moving them back. If he didn't have enough room in the cooler he would take them out sometimes and sometimes I would take them out.

Q. Sometimes who would take them out?

A. Mr. Goddard.

Q. You saw him every day do that?

A. I didn't see him every day they were taken outside.

Q. In connection with this shipment, did you see Mr. Goddard take them out? A. No.

Q. The occasion that you mentioned that some

(Testimony of Henry Lester Pineda.)

time occurred, that does not relate in your mind to this particular transaction?

A. Well, it might have happened.

Q. A lot of these things your have mentioned in connection with what happened on particular days are merely transactions, things that might have happened?

A. Transactions that happened all the time but I cannot really say something I didn't see, but I have seen him do those things, yes.

Q. So this particular butter transaction would be the typical [811] manner in which Colonel Hand inspected butter when he came to the plant of Nye & Nissen?

A. Well, I wouldn't know. I never asssited him inspecting butter at any time.

Q. You selected his samples for him, didn't you?

A. No.

Q. Did you ever select any samples of butter for Colonel Hand?

A. I don't remember for Colonel Hand, but my job was just to do whatever Ruby told me. I set aside samples hundreds of times.

Q. Is this the first occasion you set aside samples of butter for Colonel Hand, you, yourself?

A. I can't say that it was the first time or not. My job was——

Mr. Faulkner: I ask the witness——

The Court: Let him answer.

Mr. Faulkner: I did not ask him what his job

(Testimony of Henry Lester Pineda.)

was. He answered the question. I object to him volunteering.

The Court: Well, I am going to allow him to conclude his answer and it may be stricken out. I cannot anticipate what he is going to answer. Read the question.

(Question read.)

A. It was not the first time, but Mr. Goddard would say to set apart the samples on the trays and then Colonel Hand, I wouldn't know what he inspected because while I was doing that, and by the time I would get back, I would do another job—I have set them aside for him not knowing Colonel Hand was going to inspect them, but this time I know it was, because I was there. [812]

Mr. Faulkner: I ask all that go out.

The Court: The question and answer may stand.

Mr. Faulkner: Exception.

Q. When was the last time you selected samples of butter for Colonel Hand?

A. I can't tell you when.

Q. When was the first time you selected samples of butter for Colonel Hand?

A. I don't remember.

Q. On the occasion that we are speaking of in the month of February, did the sample cases remain on the flats in the freezing room?

A. Yes, we had them on flats in the cooler.

Q. The remaining part of the butter didn't remain on the floor, did it? A. Yes.

Q. Was all the butter stored in the room on flats? A. Well——

(Testimony of Henry Lester Pineda.)

Q. I mean in this particular cooler.

A. No.

Q. From which you—in which you put these samples, all the butter in there, was it on flats?

A. No.

Q. Which butter was on those flats and which was not?

A. A certain amount of it was on flats and a certain amount was not. The cooler was not big enough to take care of all of it.

Q. It requires more room when it is on flats?

A. Yes.

Q. What were the dimensions of this particular cooler?

A. Let's see, now. I believe we were going about five trays, four or five trays wide and one tray fore-and-aft. [813]

Q. You came the other way——

A. One. That would be a little over six trays wide, I believe it was. I am not very sure of that.

Q. Only one tray the other way?

A. Yes, one tray.

Q. Would that be like putting five trays in the jury box, that would be the size of the freezer?

A. No. You couldn't get—you could get about six trays?

Q. You put the trays in sequence, did you not?

A. Yes.

Q. There were six one way?

A. Five one way and one the other way, yes, six.

Q. Do you mean five one way and six the other.

(Testimony of Henry Lester Pineda.)

was it; they were square, that would be thirty trays?

A. No.

Q. What do you mean?

A. I meant a tray—when they brought it in, like a tray on a table. That can hold six cases of eggs, two one way and one sideways, four——

Q. I am talking about how many trays will fit in the freezing room.

A. I don't know how many we could get in. I knew we could get about six trays wide and about—I cannot be that accurate; I think maybe four, maybe five in.

Q. In other words, the dimensions of the freezing room were about five trays by five trays?

A. No, more than that.

Q. Can you give us some idea from this room, here?

A. I would say around 30 trays.

Mr. Pratt: I have no doubt that counsel knows the exact dimensions. [814]

Mr. Faulkner: I haven't any idea, Mr. Pratt. I don't know the dimensions, at all, except from what the witness said on his direct examination.

The Witness: I would say maybe about thirty odd trays.

Mr. Faulkner: Q. Would it aid you to pick out some objects in this room that would help us determine the size of that freezer room?

A. I really couldn't do that.

Mr. Pratt: I object to the question on the ground it is immaterial exactly how big his cooler is.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: The materiality will be disclosed very definitely.

The Court: Can you give the jury some idea of about how large this area—is this the cooler room?

A. Yes, the cooler.

The Court: As near as you can.

A. I would say around thirty feet long, and about twenty-five feet wide, something like that. I mean I am not sure about any of that. I just went according to trays we used to put in there. I never stopped—— [815]

Q. Would the width be from where you sit to where Mr. Houck sits? Would that be a fair width of the room?

A. Oh, I guess it would be from here to where the chairs are.

Q. From where you sit to where the chairs are inside the rail? A. Something like that.

Q. It would be a room about that square, would it? A. Yes.

Q. Now, on the morning that you were down there at seven o'clock, or, rather, on the morning of the day or afternoon, whenever it was, that Colonel Hand came, you went into that place and you brought out these samples that you had carefully placed in front of a large quantity of butter, isn't that right? A. That is right.

Q. And you brought them out into the presence of Colonel Hand? A. That is right.

Q. And when he was through with them you put them back in the icebox, did you not? A. No.

(Testimony of Henry Lester Pineda.)

Q. You left them out? A. That is right.

Q. Not in the freezer at all? A. No.

Q. Now, then, the next morning what did you do with those 25 or 30 cases?

A. The same day I took out the rest of the butter corresponding to those cases and put them on the floor overnight.

Q. You what?

A. I took the butter out of the cooler, the rest of the butter corresponding to those churn numbers, and put it on the floor.

Q. In other words, the churn numbers on the 25 or 30 cases that were in that icebox you brought out on the floor? A. Yes.

Q. And then you broke down all of the butter in that room to get every churn number like that, is that right?

A. Not all the butter in that room, no.

Q. I mean all the butter in that room that had a churn number similar to the one that was contained in the sample. A. That is right.

Q. In your experience there would be about ten cubes to a churn?

A. A little more than ten. I just say ten. Some were more, some were less.

Q. So ten to fifteen, would that be fair?

A. Some eight, some ten.

Q. So when you had completed that job you had out on the floor of the plant outside of the freezer somewhere around 300 cubes of butter, am I right?

Mr. Pratt: I object to that, if the Court please.

(Testimony of Henry Lester Pineda.)

The testimony is that the inspector, Colonel Hand, rejected part of this butter or certain of the churns.

Mr. Faulkner: That is right.

Q. If you take 25—Mr. Pratt wants the lower number—he rejected five, that leaves 20, and they run 10 to 25 to a churn; that is 300, using Mr. Pratt's calculation.

Mr. Pratt: 8, some of them, he said.

Mr. Faulkner: That is not a legal objection. It does not even approach one, your Honor.

The Court: Reframe your question. Let us proceed. [817]

Mr. Faulkner: Q. You went into this butter room, this freezer room, and you selected all of the cubes of butter which were of the same churn as those in the samples, is that right?

A. That is right.

Q. And you brought those cubes of butter out onto the floor, is that right? A. That is right.

Q. Having in mind, Mr. Pineda—Pinada or Pineda, which is it? A. Pinada.

Q. If I say the other I do not mean it disrespectfully to you: Mr. Pineda, having in mind that you had 25 to 30 samples of that 10 to 15 churn to a sample, is there any question in your mind that the butter you had on the floor of that warehouse on the first occasion was somewhere around 300 cases of butter?

Mr. Pratt: I object to that because counsel assumes there were 10 to 15 cubes to a churn. That is not the testimony of the witness.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Your Honor, you realize the difficulty we are under in respect to identifying transactions. The date is vague. The incident is vague. The only recourse that we have to defend against this particular charge is to find the amount of butter and the quality that will most nearly resemble some aspect of this witness' testimony.

The Court: You may answer.

A. Yes, I would say close to two or three hundred. [818]

Mr. Faulkner: Q. That was all brought out onto the floor on the day before the cutting commenced? A. Yes.

Q. What was done with those two or three hundred cubes of butter?

A. They are just placed on the floor, the flats.

Q. Did they remain there until the next morning? A. Until the next morning.

Q. And those cases, two or three hundred cases of butter, correspond to the churn numbers of the samples that formed part of the 25 to 30 cases?

A. Yes.

Q. Now, on the next day you cut butter, is that right?

The Court: Speak up so the reporter can hear you.

Mr. Faulkner: Q. Did you cut all of the butter on the next day that had been left out overnight, on the night that Colonel Hand was in there inspecting butter?

(Testimony of Henry Lester Pineda.)

A. I don't know, because I wasn't back there. I was in back in the butter room.

Q. Mr. Pineda, when you came in there at ten o'clock in the morning near the butter room and outside the freezer room, were 300 cases or cubes of butter; that is the butter that you cut that day, is it not?

A. That was the butter I was supposed to cut that day.

Q. Is it the butter that you cut that day?

A. Yes, but I can't say we cut it all, because I can't say how much the order was.

Q. The butter was placed out there on the floor of the warehouse [819] as distinguished from being returned to the cooler in order that it be cut, wasn't it? A. That is right.

Q. And when you went down there at seven o'clock in the morning that butter was there?

A. Yes.

Q. And you started to work on it, did you not?

A. Not on that butter first.

Q. What butter then did you go to first?

A. We had some butter already stripped.

Q. Where was that butter?

A. That was in the butter room already. It stayed from the night before.

Q. Then in addition to putting out these two to three hundred cases of butter on the floor for the purpose of cutting, you had prepared some other butter in the butter room?

(Testimony of Henry Lester Pineda.)

A. This is part of the 200 cases. This was part of that butter.

Q. It was part of the butter that corresponded with the churn No. 2 sample, isn't it.

A. It is the butter that was rejected.

Q. Mr. Pineda, the butter that was out on the floor was the butter than had corresponded with certain churn numbers, was it not? A. Yes.

Q. And it amounted to two or three hundred cases?

A. Don't forget, I said Colonel Hand had rejected some butter.

Mr. Faulkner: I ask that the witness be instructed not to argue with me. I am entitled to a fair answer to the question on cross-examination.

The Court: Read the question and answer.

(Record read.)

The Court: Reframe the question so there is no question.

Mr. Faulkner: Q. The butter that was placed out to be cut the next morning corresponded with certain churn numbers of the samples that Colonel Hand had inspected, did it not?

A. Not all of it, no.

Q. All right, how much of it did not?

A. We had about a tray and a half or so.

Q. And how many cubes on a tray?

A. Well, they can put around 24, around 24, I guess.

Q. 24 cubes of butter?

A. Something like that.

(Testimony of Henry Lester Pineda.)

Q. How many had been rejected?

A. Oh, we had about five, I guess, around five.

Q. How were they placed out there in the corridor?

A. They weren't. They were in the butter room.

Q. Well, every bit of butter that was out in the corridor corresponded with the sample, didn't it?

A. Yes.

Q. It was the butter that was rejected that was in the icehouse? A. That is right.

Q. Now, I will come back——

A. Not in the icehouse. The butter that was rejected was in the butter room.

Q. In the butter room, or the freezer room?

A. No, the butter room is where we were cutting the butter.

Q. Where was the butter that was rejected?

A. It was already [821] stripped in the butter room, not the cooler, the butter room.

Q. All butter that was rejected, then, on the night before you got there at seven o'clock, was placed in the butter room, is that right?

A. Yes.

Q. How many cubes of butter—not flats—how many cubes of butter were placed in that butter room?

A. I don't remember how many cubes, but I would say it was more than 24.

Q. More than one flat?

A. More than one flat.

Q. Who placed it there? A. I did.